



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
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J-33
IN REPLY PROCLTR 02-05
REFER TO

APR 01 2002

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

SUBJECT: Interim Guidance for Implementation of Section 811 of the Fiscal Year 2002
Department of Defense Authorization Act, Regarding Purchases from Federal
Prison Industries (FPI)

The purpose of this PROCLTR is to provide interim guidance on the Director of Defense Procurement (DDP) Memorandum, "Implementation of Section 811 of the National Defense Authorization Act, FY 2002, Regarding Purchases from Federal Prison Industries," dated March 4, 2002 (Attachment). Please note the Defense Federal Acquisition Regulation Supplement (DFARS) implementation will be forthcoming. However, until the DFARS guidance is issued, the following guidance applies.

Before making a purchase of a product or class of products listed in the FPI Schedule, market research must be conducted to determine whether the FPI product is comparable to products from the private sector that meet the Government's needs in terms of price, quality, and time of delivery (10 U.S.C. 2410n). The contracting officer must use the results of the market research to determine the comparability of the FPI product, considering all three areas, and document in writing the basis for the comparability determination, to include the significance of each factor under the circumstances of the acquisition. The comparability determination must be retained in the contract file. The contracting officer is strongly encouraged to consult with counsel on Section 811 acquisitions.

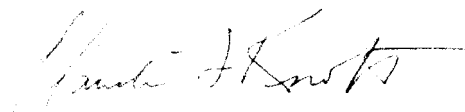
If the FPI product is comparable, the contracting officer must award to FPI in accordance with FAR 8.602(a). However, if the FPI product is comparable, but the contracting officer nevertheless concludes that purchase of the item from a private-sector source is in the best interests of the Government (e.g., for readiness or industrial-base reasons), a clearance may be pursued from FPI in accordance with FAR 8.605.

If the FPI product is not comparable, the contracting officer must use the appropriate competitive procedures to acquire the product; solicit FPI as well as private-sector sources; and consider a timely offer from FPI for award in accordance with the specifications and evaluation factors in the solicitation. Competitive buys are subject to the requirements of FAR Part 19, except that FPI will be solicited and permitted to compete in acquisitions of these items that are otherwise set aside for small business participation. No clearance is necessary under these competitive procedures when award is made to a private-sector source.



This guidance applies to all new acquisitions after the date of this PROCLTR, and expires upon the implementation of DFARS coverage. No local supplementation is authorized. Please keep this office advised about Section 811 implementation issues as they arise to ensure a consistent Agency approach. My point of contact is Ms. Mary Massaro, J-336, who can be reached at DSN 427-1366 ((703) 767-1366), or via email addressed to mary_massaro@hq.dla.mil.

Attachment

A handwritten signature in black ink, appearing to read "Claudia S. Knott", with a stylized flourish at the end.

CLAUDIA S. KNOTT
Executive Director
Logistics Policy and Acquisition Management



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

March 4, 2002

MEMORANDUM FOR DIRECTOR OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS
MANAGEMENT, ASN(RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
EXECUTIVE DIRECTOR FOR LOGISTICS POLICY AND
ACQUISITION MANAGEMENT (DLA)

SUBJECT: Implementation of Section 811 of the National Defense Authorization Act,
FY 2002, Regarding Purchases from Federal Prison Industries

Section 2410n of title 10, United States Code, enacted by section 811 of the National Defense Authorization Act, FY 2002 (Pub. L. No. 107-107), specifies under what circumstances the Department of Defense is not required to purchase mandatory items from Federal Prison Industries (FPI) (copy attached). This provision was effective on October 1, 2001, and takes precedence over the current Federal Acquisition Regulations (FAR) that address purchases from FPI. You should also be aware of 18 U.S.C. 4124 and consult with counsel in regard to such purchases.

While 10 U.S.C. 2410n is in effect and controlling, more definitive guidance will be forthcoming through an interim Defense FAR Supplement (DFARS) rule concerning DoD purchases from FPI. This interim rule has been forwarded to the Office of Management and Budget, Office of Information & Regulatory Affairs for approval. If you have any questions, please call Mr. Domenic Cipicchio, Deputy Director, Defense Procurement (Contract Policy & Administration) on (703) 697-0895 or Mr. Douglas Larsen, Deputy General Counsel (Acquisition & Logistics) on (703) 697-5387.

Deidre A. Lee
Director, Defense Procurement

Attachment:
As stated



NATIONAL DEFENSE AUTHORIZATION ACT, FY 2002
(Pub. L. No. 107-107)

SEC. 811. APPLICABILITY OF COMPETITION REQUIREMENTS TO PURCHASES FROM A REQUIRED SOURCE.

(a) CONDITIONS FOR COMPETITION.—(1) Chapter 141 of title 10, United States Code, is amended by adding at the end the following:

“§2410n. Products of Federal Prison Industries: procedural requirements

“(a) MARKET RESEARCH BEFORE PURCHASE.—Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18, the Secretary of Defense shall conduct market research to determine whether the Federal Prison Industries product is comparable in price, quality, and time of delivery to products available from the private sector.

“(b) LIMITED COMPETITION REQUIREMENT.—If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, and time of delivery to products available from the private sector, the Secretary shall use competitive procedures for the procurement of the product. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries for award in accordance with the specifications and evaluation factors specified in the solicitation.”.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following:

“2410n. Products of Federal Prison Industries: procedural requirements.”.

(b) APPLICABILITY.—Section 2410n of title 10, United States Code (as added by subsection (a)), shall apply to purchases initiated on or after October 1, 2001.

ATTACHMENT